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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1944**

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## No. 449

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REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.,

*Appellant,*

*vs.*

HANCOCK TRUCK LINES, INC.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

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## STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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JACOB WEISS,
ALBERT WARD,
FERDINAND BORN,
*Counsel for Appellee.*

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FOR THE SOUTHERN DISTRICT OF INDIANA
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**Civil Cause No. 795**

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HANCOCK TRUCK LINES, INC.,

*Plaintiff,*

*vs.*

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

*Defendants*

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**APPELLEE'S STATEMENT AGAINST JURISDICTION OF SUPREME COURT AND MOTION TO DISMISS OR AFFIRM.**

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Comes now Hancock Truck Lines, Inc., appellee, and pursuant to paragraph 3 of Rule 12 of the Supreme Court, files with the clerk possessed of the record of the above cause, the following typewritten statement disclosing matters and grounds making against the jurisdiction of the Supreme Court asserted by the appellant, Regular Common Carrier Conference of the American Trucking Associations, Inc., and includes herewith appellee's motion to dismiss, or, in the alternative, to affirm the judgment of the District Court, such statement and motion being as follows:

**Statement**

The judgment of the District Court appealed from herein was entered on May 25, 1944; it was rendered upon the final hearing of the suit brought by appellee against the United

States and the Interstate Commerce Commission to suspend and set aside, in part, an order made by said Commission against appellee; on August 4, 1943, the Commission, in a proceeding then properly pending before it, found and adjudged that appellee's predecessor, Globe Cartage Company, Inc., had been engaged in bona fide operations without interruption, since prior to June 1, 1935, transporting by motor vehicles for compensation, in interstate or foreign commerce, general commodities; that it was a common carrier of such commodities, and "entitled to authority to continue operations as such"; the Commission further found that it was without power to restrict or limit the operations of Globe in a manner which would change its status from that of a common carrier; nevertheless, and notwithstanding such findings of fact by the Commission, it ordered that the certificate authorizing operations by Globe as such common carrier of general commodities should be confined to such general commodities "which are at the time moving on bills of lading of freight forwarders"; appellee succeeded to all of the rights of Globe Cartage Company, Inc., and brought this suit to suspend and set aside that part of the order of the Commission which confined its operations as a common carrier of general commodities to such commodities "which are at the time moving on bills of lading of freight forwarders."

The District Court, properly consisting of three judges, in its decree of May 25, 1944, upon the final hearing of said suit, and upon special findings of fact and conclusions of law properly made, signed and entered therein, suspended, set aside and enjoined the enforcement of that part of said order of the Commission so complained of by appellee; it is from the final hearing of said suit that this appeal has been attempted.

The Regular Common Carrier Conference of the American Trucking Associations Inc. was not a party to the suit

as originally brought by appellee; however, on April 8, 1944, it filed a petition to intervene, and it was granted leave to intervene on that date; it never filed any pleadings of any kind, and never tendered any issue in the case; it never adopted any of the pleadings of any of the parties to the action. Its petition to intervene shows no interest in this proceeding, and it cannot in any manner be affected by the judgment.

**Appeal Not Taken in Time**

The petition for this appeal was not filed until July 22, 1944; the appeal was therefore not taken within the time fixed by law; such appeal could only have been taken within thirty days after May 25, 1944; it could not be taken after the expiration of thirty days from May 25, 1944; the Supreme Court therefore has no jurisdiction of this appeal—has no jurisdiction of the parties, or of the subject matter of the appeal, and it can not acquire any jurisdiction herein.

**Appeal Not Properly Taken**

The judgment from which the appeal has been attempted was rendered by a statutory three judge court, which can only act by a majority of its members, and the appeal has been acted upon by only one judge of said court.

**No Substantial Question Involved**

Appellant, Regular-Common Carrier Conference of the American Trucking Associations, Inc., cannot, and has not, shown that the questions involved as to it are substantial; it cannot, and has not, shown that it has any question involved in this appeal; it filed no pleadings, it tendered no issue; it did not adopt any pleading of any other party; as an intervenor, it wholly failed to accompany its original motion to intervene "by a pleading setting forth the claim or defense for which intervention is sought" (Rule 24, Fed-

eral Rules Civil Procedure, clause (c); *Miami County National Bank* v. *Bancroft* (1941), 121 Fed. (2) 921 (10 C. C. A.).

Its petition to intervene shows no interest whatever in the proceedings; it shows *only* that petitioner is a non-profit corporation, consisting of regular route common carrier members of the American Trucking Associations, Inc., and its purpose is to protect the interests of the regular route common carrier trucking industry through *intelligent cooperation and organization;* many of its members are common carriers engaged in the transportation of general commodities by motor vehicles in the territory covered by appellee, and any operating authority granted to appellee "will place said complainant in competition with and will prejudice the best interests of the members of the intervenor."

It does not appear how the intervenor will be prevented from carrying on its work of intelligent cooperation and organization with its members if the judgment is not set aside.

Appellant's petition shows no jurisdictional interest; the decree does not affect it in any manner.

*Smith* v. *Gale* (1892), 144 U. S. 509;

*Consolidated Gas Co.* v. *Newton* (1919), 256 Fed. 238 (D. C.); affirmed 260 Fed. 1022; cer. denied 250 U. S. 271.

**Appellant Cannot Present a Substantial Question by Adopting Same Assignment of Error, Petition for Appeal, etc., of Main Defendants.**

The Regular Common Carriers Conference of the American Trucking Associations, Inc., has used the notice of appeal, petition for appeal, order allowing appeal, citation on appeal, jurisdictional statement, assignment of errors, statement relating to paragraph 3 of Rule 12, and copy of

notice to the Attorney General of Indiana, adopted by the United States and Interstate Commerce Commission; even by so doing, it does not have a separate standing which entitles it to an appeal, and its appeal should be dismissed.

*City of Chicago* v. *Chicago Transit Co.*, 284 U. S. 577;
*Atles* v. *U. S.* (1931), 50 Fed (2) 808 (3 C. C. A.).

**Appellant Is Estopped from Claiming Right of Appeal**

Appellant, Regular Common Carrier Conference of the American Trucking Associations, Inc. is estopped from asserting its right to appeal, for the reason that it took the position in the District Court that the time for this appeal had expired and lapsed prior to July 5, 1944, and this appeal was not granted until July 22, 1944.

On July 5, 1944, said appellant directed a letter to each of the judges who decided the case below, and attached thereto a motion, with proper service having been made on appellee, wherein said appellant moved said lower court to set aside said judgment of May 25, 1944, and to re-enter the same as of July 1, 1944, the reason being, as assigned in the motion:

> "(5) That the time for taking an appeal from the judgment of this court had elapsed when notice of judgment was received" (July 1, 1944) (See copy of said motion attached hereto as Exhibit A).

Said appellant, having taken the position in the lower court that the time for appeal had expired before July 1, 1944, for the purpose of inducing and moving the lower court to take affirmative action in its favor, cannot now be heard to say that the time for such appeal had not expired. It cannot take an inconsistent position in the court of appeal.

*Rees* v. *Lombard* (1927), 21 Fed. (2) 276 (9 C. C. A.).
*Janus* v. *U. S.* (1930), 38 Fed. (2) 431 (9 C. C. A.).

## Statutory Provisions

The statutory provisions upon which appellee relies to sustain its position that the Supreme Court has no jurisdiction of this appeal are found in Section 47, Title 28, U. S. C. A. (Act of Oct. 22, 1913, c. 32, 38th Stat. 220), which provides as follows:

> "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges asking the order and identified by reference thereto, that such irreparable damage would result to

the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; *and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply*" (emphasis supplied).

Appellee contends that the foregoing statute limits the right of appeal in suits brought to suspend and set aside, in whole or in part, an order of the commission, to thirty days from the final hearing, and a petition for such appeal can not be granted by less than a majority of the three-judge court referred to therein. The provisions of Section 792, Title 28, U. S. C. A., do not relate to proceedings after final judgment, as such Act clearly shows that it only authorizes action by a single judge which may be reviewed by all of the judges prior to the final hearing.

**Cases Denying Jurisdiction of Supreme Court Where Appeal Not Taken within Statutory Time Allowed**

Where the statutory time for taking an appeal has expired, it cannot be arrested or called back by an order of the court allowing such appeal; the court has no power to allow an appeal after the time limited therefor has expired; the

Supreme Court cannot exercise jurisdiction in an appeal that was not taken within the time prescribed by the statute, as its appellate jurisdiction depends upon the Acts of Congress.

*Credit Company Limited* v. *Arkansas Central Railway Company* (1888), 128 U. S. 258;
*Old Nick Williams Co.* v. *United States* (1910), 215 U. S. 541;
The Lucy (1868), 8 Wall. 307.

**Statutory Provisions Relied on by Appellant Do Not Sustain Jurisdiction**

Appellant, in its jurisdictional statement, under the title "A. Statutory Provisions," relies upon:

> "U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of Oct. 22, 1913; c. 32, 38 Stat. 220)."

Said *Section 47a, Title 28 U. S. C. A., is the only authority cited by appellant bearing upon the question of the time in which the appeal must be taken;* its other citations relate to the right of the District Court, and the Supreme Court in a proper appeal, to exercise jurisdiction of the cause of action presented by the complaint.

*Section 47a, Title 28 U. S. C. A., upon which appellant predicates the jurisdiction for this appeal, was repealed* by the Act of Congress of February 13, 1925, c. 229, Section 1, 43 Stat. 938, such Act being as follows:

> "Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, *and not otherwise* (emphasis supplied).
>
> * * * * * * *

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money" (includes only cases referred to in Section 47).

"Sec. 13. That the following statutes and parts of statutes be, and they are, repealed;

* * * * * * *

All other Acts and parts of Acts, insofar as they are embraced within and superseded by this Act or are inconsistent therewith" (43 Stat. 940).

Said Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938, is Section 345, Title 28 U. S. C. A., and the annotators have set it up therein as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise:

* * * * * * *

(4) So much of Section 47 of this title as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

There is no justification for the re-write of section 345, Title 28, U. S. C. A., which the annotators have included as section 345 in the 1943 Supplement to the Code, and wherein they have supplied the reference to section 47a; the original Act of Congress, 43 Stat. 938, must stand, and the appeals referred to in Section 47a are prohibited by said act of February 13, 1925; the right to such appeals having been

abolished, the time fixed for taking such appeals becomes functus officio.

From 1925 to 1934, section 47a did not appear in the Code; the fact that it has been improperly resurrected and permitted to linger in the successive editions of the Code is immaterial; the Code cannot prevail over the Statutes at Large where the two are inconsistent, and such inconsistency exists both as to section 47a and section 345 as carried in the 1943 Supplement; *Stephan* v. *United States* (1943), 319 U. S. 423.

Our position in this regard will more fully appear from a further examination of the history of Sections 47 and 47a.

### History of Sections 47 and 47a

Sections 47 and 47a, as printed in Title 28, U. S. C. A., originated from two sources:

a. Section 47 is an amendment of certain provisions of the law which created the Commerce Court (created June 28, 1910, c. 309, Sec. 36, Stat. 639; 36 Stat. 1146-1150; 38 Stat. 219).

b. 47a sets out language taken from Stat. 36, 1150 and from 38 Stat. 220, which was recast by the annotators of the United States Code to express their conception of existing law; it was repealed by the Act of Feb. 13, 1925, c. 229, Sec. 1; 43 Stat. 938 (Sec. 345. Title 28, U. S. C. A.).

### Commerce Court

The Commerce Court Act was formerly Chapter 9 of the Judicial Code and consisted of sections 200 to 214. We do not believe it is proper to set out the whole of such Act, but do feel that it is advisable to make the following references thereto; the Act creating such court is very largely set out following subdivision (27) of section 41, Title 28, U. S. C. A.,

on pages 648-651 of the volume containing said subdivision (27).

*Section 207* gave the court its jurisdiction, which, for the purpose of this statement, may be set out as follows:

> First: All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money (now subd. 27 of Section 41).
>
> Second: Cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission (now subd. 28 of Section 41).
>
> Third: (Related to unjust discrimination; see Title 49, U. S. C. A. Section 43).
>
> Fourth: (Related to mandamus proceedings; see Section 20(e) of Title 49 U. S. C. A.).

*Section 208* is section 46 of Title 28 U. S. C. A. and provides that suits to enjoin, set aside, annul or suspend any order of the Interstate Commission shall be brought in the (district) court against the United States.

*Section 209* is section 45 of Title 28 U. S. C. A. and relates to the invoking of jurisdiction by filing a petition and the giving of thirty days' notice.

*Section 210* is set out in full, because it related to appeals and fixed the time within which such appeals might be taken; it is as follows:

> "A final judgment or decree of the Commerce Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court may direct the original record to be

transferred on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court as the case may require. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the Commerce Court appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree. Appeal to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court" (36 Stat. 1146-1150).

It should be noted that in the Commerce Court Act an appeal might be taken from a final judgment within sixty days, and from an interlocutory order or decree within thirty days.

**Commerce Court Abolished**

The Commerce Court was abolished and its jurisdiction was transferred to the District Courts by provisions of the Deficiencies Appropriations Act of October 22, 1913, c. 32, 38 Stat. 219; this transfer of jurisdiction carried over to the district courts the jurisdiction of the Commerce Court in the specific cases referred to hereinabove as being within the jurisdiction of such court, and such specific cases became, and are now, those referred to and included within clauses 27 and 28 of Title 41, U. S. C. A.,—27 being, "all cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction

of criminal pu hment, of any order of the Interstate Commerce Commission other than for the payment of money"; and 28 being, "Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission"; also the cases referred to in Section 43 and Section 20(e), Title 49 U. S. C. A.

When Congress abolished the Commerce Court, it nevertheless preserved the principle that where cases were brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission, more than one judge should sit, and provided that a three-judge court must be convened, and that one member thereof must be a circuit court judge; it required a majority of three judges to concur in any action taken by the court; it also preserved the principle of expediency in such cases, and clearly differentiated between the procedure in ordinary cases arising under clause 27, supra, and those arising under sections 43 and 20(e) of Title 49, as against cases arising under clause 28, and set up a special procedure as to cases arising under clause 28, not only as to the hearing before the lower court, but also as to when the appeal must be taken in such special cases, *and expressly limited the time for taking appeals from final judgments in such cases to thirty days.* (Section 47, Title 28, U. S. C. A.)

**Section 47a**

Immediately following that part of the original Act of October 22, 1913, c. 32, 38 Stat. 220, which we have set out on page 4 as Section 47 of Title 28, U. S. C. A., is found that part of such Act which is relied upon by appellant as conferring jurisdiction of this appeal, and it is as follows:

> "A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States

if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice shall be served upon the defendants in the case and upon the Attorney General of the State."

Section 47 and that part of 47a just quoted are parts of a single section of the Act of October 22, 1913, c. 32, 38 Stat. 220 aforesaid, which was an Act that abolished the Commerce Court, transferred its jurisdiction to the District Courts, and appeals were provided direct to the Supreme Court in all cases, and that part of the original Act of October 22, 1913, relating to appeals from the District Courts, and which the annotators of the federal code have divided in sections 47 and 47a, reads as follows:

"An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases."

We submit that said part of said act which is carried as section 47 relates to appeals from cases arising under subdivision (28) of Section 41, Title 28 U. S. C. A., which have been determined by the three-judge court aforesaid.

in cases brought to enjoin, set aside, annul, or suspend, in whole or in part, an order of the Commission; the part which is carried as 47a was, when enacted, intended to have application to all cases heard and determined by a single judge sitting as a district court, but since the Act of February 13, 1925, 43 Stat. 938, supra, the time for appeal referred to in section 47a has no application, because such cases cannot be taken direct to the Supreme Court.

The Supreme Court has already recognized that the time for appeal formerly allowed by the Commerce Court Act has been shortened from sixty to thirty days by the Act of October 22, 1913; see *Virginian Ry. Co.* v. *United States* (1926), 272 U. S. 658, where, in speaking of said Act, it says:

> "Congress evidently deemed that it had adequately guarded against the dangers incident to the improvident issue of the writs of injunction in cases of this character by the provisions which require action by the court of three judges, which permit of expediting hearings before the District Court, *which shorten the period of appeal* (emphasis supplied), and which give a direct appeal to this court."

The only time which was shortened by the Act of October 22, 1913, was the reduction of the *time for appeal from final hearings from sixty to thirty days.*

**Appellant Admits That Time for Appeal Expired**

The appellant has heretofore admitted that the time for this appeal had expired before the petition for such appeal was filed; it was not a party to the suit as originally filed by appellee, but it came in with a petition to intervene, and on April 8, 1944, the lower court gave it the right to intervene; as above stated, the judgment was rendered on May 25, 1944; on July 5, 1944, it directed a letter, which

had attached thereto a motion, to each of the judges who heard and decided the case below, with copy served on counsel for appellee, wherein it moved the three-judge court to set aside said judgment of May 25, 1944, and re-enter it as of a later date, the reason assigned being that it had not been notified of the rendition of the judgment until June 30, 1944, and *"the time for taking an appeal from such judgment had then elapsed"* (emphasis supplied).

We thus have the written admission of appellant that our position is correct, and the appeal has not been timely taken.

Inasmuch as the Supreme Court cannot acquire any jurisdiction of this appeal, the appeal should be dismissed, or the judgment should be affirmed.

**Motion for Dismissal or for Affirmance of Judgment**

The appellee, Hancock Truck Lines, Inc., now moves the Supreme Court to dismiss this appeal, or, in the alternative, to affirm the judgment of the District Court, for the reason that the Supreme Court has no jurisdiction of this appeal, and cannot acquire any jurisdiction herein.

Dated at Indianapolis, Indiana, this 2nd day of August, 1944.

HANCOCK TRUCK LINES, INC.,
By JACOB WEISS,
*8 East Market St., No. 512;*
ALBERT WARD,
*8 East Market St., No. 318;*
FERDINAND BORN,
*718 Chamber of Commerce Bldg.,*
*All of Indianapolis, Indiana,*
*Its Attorneys.*

## EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

Civil Action. File No. 795

HANCOCK TRUCK LINES, INC., *Plaintiff*,

*vs.*

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, *Defendants*

Motion to Set Aside Judgment

Comes now the Regular Common Carrier Conference of the American Trucking Associations, Inc., and by its attorneys respectfully shows the Court that:

(1) The said Regular Common Carrier Conference of the American Trucking Associations, Inc., was granted the right to intervene in the above cause by this Court;

(2) That the said intervenor appeared by its counsel in said cause, participated in the hearing of said cause and filed briefs herein;

(3) That the said intervenor was duly notified by mail by the Clerk of this Court of the dates on which hearings would be held;

(4) That the said intervenor and its attorneys, being unfamiliar with the Rule of this Court respecting the appointment of counsel resident in the County wherein the judge of this Court is holding Court (Section (d), Rule 1 of the Rules of the District Court of the United States for the Southern District of Indiana) and relying upon the practice heretofore followed in the case of Ziffrin, Inc. v. United States and Interstate Commerce Commission, No. 948 Civil by the Clerk of this Court of mailing notices of orders and judgments entered, was unaware of the entry of judgment herein on the 25th day of May, 1944, and had no notice of

same until the 1st day of July, 1944, when one of its counsel received answer to his inquiry of June 30, 1944 directed to the Clerk of this Court; as per the attached Exhibits A and B, same being copies of the correspondence above referred to.

(5) That the time for taking an appeal from the judgment of this Court had elapsed when notice of judgment was received.

WHEREFORE, intervenor, by its counsel, respectfully petitions that this Court make and enter its order setting aside its judgment of May 25, 1944, and re-enter same as of July 1, 1944.

REGULAR COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.,

By ——— ———,

*1515 Paul Brown Building,*
*St. Louis 1, Missouri.*

HOWELL ELLIS,
*520 Illinois Building,*
*Indianapolis, Indiana,*
*Resident Counsel.*